

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
VIRGINIA PON, et al.,
Alleged Debtors.

Involuntary Case No. 91-3-4765-LK/MM

GOLDEN DIAMOND INVESTMENTS, a
California limited, partnership,
Alleged Debtor,

Involuntary Case No. 91-3-4979-LK/MM

VIGINIA QUAN, individually and aka V-2
Investments,
Alleged Debtor.

Involuntary Case No. 91-3-5114-LK/MM

MEMORANDUM OPINION

INTRODUCTION

Before the Court is the issue of liability of D & K Construction Co., as petitioning creditor, under § 303(i)(2) for bad faith in filing involuntary bankruptcy petitions against the alleged debtors, Virginia Quan and Golden Diamond Investments, a California Limited Partnership ("GDI"). Damages, if any, in these cases and the case of In re Virginia Pon are reserved for future determination in a consolidated trial.

The Quan and GDI cases are related to the case of In re Virginia Pon, Case No. 91-3-4765-

1 LK-MM, which was bifurcated so that this court could hear the issue of liability first. In the Pon
2 case, the court's ruling was that D & K, as the sole petitioning creditor, is liable under § 303(i)(2) for
3 filing the involuntary bankruptcy petition in bad faith. The determinative issues with respect to
4 liability in the Quan and GDI cases are whether a reasonable person would have concluded after
5 investigation that filing involuntary bankruptcy petitions against the alleged debtors was an
6 appropriate course of action and whether D & K, having delegated the factual investigation to its
7 counsel, may now assert reliance on counsel as a defense.

8 Also before the Court are the alleged debtors' motions that sanctions be imposed against
9 Michael Kissinger, D & K's attorney, under Bankruptcy Rule 9011 for filing the involuntary petitions
10 against Pon, Quan, and GDI.

11 For the reasons stated below, the court finds that the petitions were filed in bad faith under §
12 303(i)(2). Therefore, the motions for sanctions are granted.

13 14 **FACTS**

15 **A. The Union Street Project**

16 Pon holds equity interests as either a partner or an investor in various entities that own real
17 estate construction projects in San Francisco for which D & K provided materials and services. Pon
18 generally participated in the negotiations with the general contractor for each of the construction
19 contracts. The alleged debtors are Pon's business associates on two of these real estate projects.

20 GDI holds title to the Union Street project, and Pon is a limited partner of GDI. John Lau
21 Construction Co. was the general contractor on the project until its dismissal and subcontracted the
22 entire project to D & K, which was the sub-general contractor on the project. John Dunne and John
23 Kerrisk are the general partners of D & K. Pon had a separate arrangement with Lau Construction to
24 share profits from the Union Street project. She was also an authorized signatory on the Lau
25 Construction bank account.

26 Lau Construction is not a party to these proceedings because it entered into a stipulated
27

1 judgment with D & K in Superior Court admitting liability under the contract for the construction
2 work on the Union Street project. GDI was neither a party to the construction contract nor a party
3 to the stipulated judgment. D & K contends that Pon made representations that either Pon or GDI
4 would pay D & K for its work on Union Street. GDI counters that these statements were made in
5 connection with negotiations to reach a global settlement of all issues involving Union Street,
6 including negotiations with the construction lender to fund certain construction draw requests.

7 Security Pacific Bank is the construction lender for a \$3 million loan to GDI on the Union
8 Street project. When a foundation problem in the Union Street project resulted in lost time, GDI fell
9 into default on the loan to Security Pacific Bank. GDI negotiated with Security Pacific Bank for an
10 extension or modification of the loan, but GDI remained in default on the loan at the time D & K filed
11 the involuntary petition against GDI.

12 **B. The Larkin Street Project**

13 V-2 Investments, a California general partnership ("V-2"), is the owner of the Larkin Street
14 project, a completed construction project in San Francisco. Quan and Pon are the general partners of
15 V-2, and Quan acknowledges that Pon had the authority to bind her to contracts by V-2. Pon
16 negotiated the terms of the Larkin Street construction contract with Lau Construction, the general
17 contractor which again used D & K as the sub-general contractor. The Larkin Street contract
18 includes a change to the original contract providing that the owner of the project would be liable to D
19 & K to the same extent that Lau Construction is liable. However, the provision is not initialed by
20 Pon, although she initialed other changes in the contract. Pon does not recall that the provision was
21 in the contract at the time she executed it on behalf of V-2, and the original document has not been
22 produced.

23 Again, Security Pacific Bank is the construction lender for the Larkin Street project. V-2 was
24 negotiating with Security Pacific for an extension or modification of the \$2.6 million construction
25 loan when the involuntary petition was filed. Although the construction loan was in default at the
26 time of the commencement of the involuntary petition, the bank had not commenced any legal action

1 against Quan. However, the bank considered the involuntary petition an additional event of default.
2 Moreover, D & K has not pursued Quan in state court to establish her liability on the Larkin Street
3 project. However, D & K has commenced an action against V-2, which has filed a counterclaim for
4 gross construction negligence.

5 C. D & K's Claims

6 It is undisputed that D & K has not been paid in full for its labor and materials furnished for
7 the Union Street project and on the Larkin Street project. D & K has not been paid approximately
8 \$220,000 on the Larkin Street project and has not been paid approximately \$400,000 on the Union
9 Street Project. Further, GDI does not dispute that it was in default on the construction note at the
10 commencement of the involuntary case, but it contends that it was in the process of negotiations with
11 representatives of the bank for an extension and that its direct liability to D & K was subject to a bona
12 fide dispute. Quan contends that her liability to D & K was strictly derivative of the partnership's
13 liability and is, therefore, disputed.

14 In its defense, D & K alleged that Pon and her "cohorts," as Kissinger characterizes them,
15 have engaged in bank fraud by misrepresenting real estate values, defrauded D & K, and
16 misappropriated construction funds. However, these allegations have not been substantiated by the
17 evidence.

18 Theories of alter ego liability are the subject of a state court action commenced by D & K
19 against Pon and GDI before the commencement of the involuntary petition. However, D & K has not
20 pursued or established alter ego liability by Pon or GDI to D & K on the Union Street project.

21 D & K Construction filed a joint involuntary bankruptcy petition on November 20, 1991
22 naming Virginia Pon, Virginia Quan, Golden Diamond Investments, and others as the alleged debtors.
23 It delegated to its counsel, Kissinger, the task of conducting a reasonable factual investigation. As
24 the litigation progressed, D & K believed that the petition was procedurally improper since it named
25 more than one party as joint debtors. Kissinger, with D & K's knowledge, refiled a separate amended
26 involuntary petition against GDI on December 3, 1991 and a separate amended involuntary petition
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1 against Quan on December 11, 1991. Judge Lloyd King subsequently dismissed the involuntary
2 petition against Pon on February 28, 1992 and dismissed the involuntary petitions against GDI and
3 Quan on March 31, 1992. Judge King found that D & K's claims against GDI and Quan are subject
4 to bona fide disputes.

6 DISCUSSION

7 A. Standard For Determination Of Bad Faith Filing

8 The outcome of this litigation turns on what constitutes appropriate grounds for filing an
9 involuntary bankruptcy petition. Section 303(i)(2) of the Bankruptcy Code provides that the
10 bankruptcy court may grant judgment for any damages proximately caused by the filing of an
11 involuntary petition or punitive damages against the petitioning creditor. Courts have applied three
12 different tests to determine whether an involuntary bankruptcy petition is filed in bad faith. Some
13 courts, including the Ninth Circuit Bankruptcy Appellate Panel, use an objective test which asks
14 whether a reasonable person would have filed the petition. In re Fox Island Square Partnership, 106
15 Bankr. 962, 967 (Bankr. N.D. Ill. 1989). Other courts look at the creditor's motives and conduct,
16 applying a subjective standard. Id. Still other courts combine both the objective and the subjective
17 approaches and use a two-part test. Id.

18 1. Application Of The Objective Test

19 The Bankruptcy Appellate Panel has held that bad faith is measured by an "objective test" of
20 "what a reasonable person would have believed." In re Wavelength, Inc., 61 Bankr. 614, 620 (Bankr.
21 9th Cir. 1986).¹ An inquiry into whether a reasonable person in the position of the petitioning
22 creditor would have initiated the bankruptcy case includes a review of the petitioning creditor's pre-
23 filing inquiries into the total number of claim holders as well as a review of the legal justification for

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25 ¹ "[T]he objective test is actually a subjective one [for the trial judge's determination], and '[i]n the
26 final analysis, whether a party has acted in bad faith or not is essentially a question of fact to be determined
27 by the court.'" In re Johnston Hawks Ltd., 72 Bankr. 361, 367 (Bankr. D. Haw. 1987)(citing In re
Advance Press & Litho, Inc., 46 Bankr. 700, 704 (D. Colo. 1984).

1 filing. In re Caucus Distributors, Inc., 106 Bankr. 890, 925 (Bankr. E.D. Va. 1989). The absence of
2 a pre-filing inquiry and investigation generally will support a finding of bad faith. In re Alta Title Co.,
3 55 Bankr. 133, 141 (Bankr. D. Utah 1985). Disregard of the debtor's financial condition as of the
4 petition date and consequent economic loss to the debtor resulting from an involuntary petition
5 warrants an award of damages under § 303(i). In re Laclede Cab Co., 76 Bankr. 687, 694 (Bankr.
6 E.D. Mo. 1987).

7 The objective test also requires that the petitioning creditor follow the provisions of the
8 Bankruptcy Code; otherwise, the petition is without legal justification. See Johnston Hawks, 72
9 Bankr. at 366. Strict compliance with the provisions of § 303 is required to maintain the integrity of
10 the Bankruptcy Code. Caucus Distributors, 106 Bankr. at 925.

11 Section 303(b) provides that, if the alleged debtor has more than twelve creditors, an
12 involuntary petition must be commenced by three or more creditors whose claims are not contingent
13 as to liability or subject to a bona fide dispute. A bona fide dispute is a meritorious, existing conflict
14 as to the validity of a claim. Atlas Machine & Iron Works, Inc. v. Bethlehem Steel, 986 F.2d 709,
15 715 (4th Cir. 1993). Although the court should not resolve the dispute, a bona fide dispute exists if
16 there is a genuine issue of material fact that bears upon the debtor's liability to the petitioning creditor,
17 or a meritorious contention as to the application of law to undisputed facts. In re Lough, 57 Bankr.
18 993, 997 (Bankr. E.D. Mich. 1986). For example, a debtor's answer and counterclaim in a pending
19 state court suit may constitute evidence that the claim is disputed. See In re Gold Bond, 98 Bankr.
20 128 (Bankr. R.I. 1989).

21 Section 303(h) also requires that the debtor is generally not paying its debts as they become
22 due. A finding that the debtor is generally not paying debts as they became due requires a more
23 general showing of the debtor's financial condition and debt structure than merely establishing the
24 existence of "a few unpaid debts." In re General Trading, Inc., 87 Bankr. 216 (Bankr. S.D. Fla.
25 1988). The reason for the requirement of three petitioning creditors and more than a few unpaid
26 debts is that bankruptcy contemplates more than a two party dispute. Epstein, David G., Steve H.

Nickels & James J. White, 1 Bankruptcy Practitioner Treatise Series § 2-5 at p. 30 (West 1992).

2. Application Of The Subjective Test

Courts have developed two formulations of the subjective test to determine the existence of bad faith. Under the subjective test, courts have found that bad faith exists where the petitioning creditor filed the involuntary petition for an improper purpose or an improper use of the Bankruptcy Code. In re Better Care, 97 Bankr. 405, 410 (Bankr. N.D. Ill. 1989). The "improper purpose" formulation of the subjective test finds that bad faith exists where the petition is motivated by ill will, malice, or the desire to embarrass or harass the debtor. In re Camelot, 30 Bankr. 409, 411 (D. Tenn. 1983). Use of an involuntary bankruptcy petition to effect a non-bankruptcy purpose where the filing was ill-advised and perhaps based on contrivance constitutes bad faith. In re Laclede Cab Co., 76 Bankr. at 693 (to force labor negotiations).

The second view is the "improper use" formulation of the subjective test. This test finds bad faith where the creditor's actions constitute an improper use of the Bankruptcy Code as a substitute for customary collection procedures. Johnston Hawks, 72 Bankr. at 365-66; Advance Press, 46 Bankr. at 703. For example, a single creditor cannot use the bankruptcy court as a forum for the trial and collection of an isolated disputed claim. In re Nordbrock, 772 F.2d 397, 399 (8th Cir. 1985)(citations omitted); In re Paroline v. Doling, 116 Bankr. 583, 585 (Bankr. S.D. Ohio 1990). The failure to pay a single debt does not establish that the debtor is "generally not paying his debts." In re Nordbrock, 772 F.2d at 400. A creditor does not have a special need for bankruptcy relief if it can go to state court to collect a debt. Id.

It is also an improper use of the Bankruptcy Code to file an involuntary petition to obtain a disproportionate advantage rather than to preclude other creditors from obtaining a disproportionate advantage. Better Care, 97 Bankr. at 411. This is especially true where the petitioning creditor could have obtained that advantage in an alternate forum. Id. Where the creditor has adequate protections and remedies in a non-bankruptcy forum, there is no need to invoke the bankruptcy forum. In re Arlumsa Development Corp., 33 Bankr. 981, 983 (Bankr. S.D.N.Y. 1983).

3. Application Of The Two-Part Test

Under the two-part test, which is the majority view, the determination of whether an involuntary petition was filed in bad faith requires an examination into the petitioning creditors' prefiling inquiry into both the facts and the law and consideration of the petitioning creditor's purpose for filing the petition. Alta Title, 55 Bankr. at 141. The conclusion of the bankruptcy court is then based on the totality of the circumstances. Caucus Distributors, 106 Bankr. at 923.

B. Reliance On Counsel Is Not An Adequate Defense

A party is not relieved of the duty to conduct a reasonable investigation before filing an involuntary petition by delegating the factual investigation to counsel. Punitive damages under section 303(i) may be assessed against a petitioning creditor even if the creditor relied on counsel for all the resulting acts exhibiting bad faith. Wavelength, 61 Bankr. at 620. See also In re Ramsden, 17 Bankr. 59 (Bankr. N.D. Ga. 1981)(punitive damages may be assessed when attorney's failure to consult statute resulted in filing of frivolous petition). That the petitioning creditor may have acted on poor legal advice does not negate bad faith and excuse indifferent behavior. Johnston Hawks, 72 Bankr. at 366. Nor does it excuse the filing of an involuntary petition for an improper purpose. Better Care, 97 Bankr. 405.

C. D & K Is Liable For Bad Faith Filing Under § 303(i)

Applying either the objective test, the subjective test, or the combined objective and subjective test, the court concludes that D & K is liable under § 303(i)(2) for filing the Quan and GDI involuntary petitions in bad faith.

**1. Under The Objective "Reasonable Person" Standard,
Petitioning Creditor Must Conduct A Reasonable Investigation**

As a petitioning creditor, D & K must conduct a reasonable investigation of the debtors' financial affairs prior to filing an involuntary petition. No evidence has been adduced to establish that either Quan or GDI were "generally not paying their debts as they became due." In fact, the evidence suggests that in December 1991, Quan was generally paying her debts as they came due.

1 Nonpayment of a single creditor is not what is contemplated by the language "generally not paying"
2 debts as used in section 303(h)(1). Instead of introducing evidence of the alleged debtors' financial
3 condition, D & K and Kissinger have persisted in asserting that the alleged debtors were engaged in
4 fraud and misappropriation of assets in an attempt to defend their conduct.

5 The evidence established that the Larkin Street contract is between Lau Construction and
6 D & K. Kerrisk testified that Quan had never personally promised that she would pay him for the
7 Larkin Street project or the 28th Avenue project, another V-2 Investments project. This is consistent
8 with Quan's testimony that she had not executed any of the contracts or made any oral promises to
9 pay D & K. There exists a bona fide dispute as to whether V-2 is directly liable to D & K on the
10 Larkin Street contract. Although a general partner is jointly liable for the partnership's contract
11 claims, V-2 Investments' liability to D & K had not been established at the time of the involuntary
12 petition.

13 Similarly, GDI's liability on the Union Street contract had not been established but was still
14 the subject of litigation in Superior Court. D & K has failed to comply with the requirements of
15 § 303 not only by failing to conduct an adequate investigation of the alleged debtors' financial affairs
16 but also by initiating the petitions while its claims were subject to a bona fide dispute. Quan and GDI
17 each had, and D & K reasonably should have known that they had, more than twelve creditors.
18 Notwithstanding, D & K acted as a sole petitioning creditor first by filing a joint petition against the
19 alleged debtors and subsequently in both the Quan and the GDI cases. Applying the objective
20 standard, the court finds that a reasonable person in D & K's position would not have believed that it
21 was appropriate and consistent with the provisions of the Bankruptcy Code to file involuntary
22 petitions against Quan and GDI.

23 **2. Under the Subjective Test, Indicia of Improper Purpose for** 24 **Petition Are Evident**

25 Under the first formulation of the subjective test, bad faith exists when a petition is "ill advised or
26 motivated by spite, malice or a desire to embarrass the debtor." Camelot, 30 Bankr. at 411. In D & K's
27 effort to establish that Quan was not paying her debts as they became due, Kerrisk executed a declaration

1 in support of the involuntary petition against Quan that stated that Quan "cheated people" and "forced
2 them into poverty." Kerrisk has not been able to establish this assertion. There is a major difference
3 between alleging that a party is liable on a debt and alleging that the party is generally not paying that
4 party's debts as they become due. Although D & K has not adequately supported its claims, it has
5 persisted in advancing allegations that the alleged debtors are perpetrating bank fraud, conspiracy, and
6 misappropriation of assets. The court rejects D & K's argument that special circumstances amounting
7 to fraud, artifice, or scam are present in these cases or that D & K is without an adequate non-bankruptcy
8 remedy, as justification for the filing of these involuntary petitions.

9 D & K's reliance on 7H Land & Cattle Co., 6 Bankr. 29 (Bankr. Nev. 1980), for the principle that
10 a single creditor may establish a case for involuntary bankruptcy in special circumstances is misplaced.
11 Legal analysts generally recognize that an involuntary bankruptcy petition should not be taken lightly by
12 petitioning creditors because of the significant effects it can have on the debtor's business. An involuntary
13 petition can disrupt the debtor's commercial relationships and deprive the debtor of necessary credit or
14 cash flow on which many businesses rely. In some instances, the damage to a debtor's economic interests
15 and business reputation is irreparable.

16 An allegation of bankruptcy is a charge that ought not to be made
17 lightly. It usually chills the alleged debtor's credit and his sources of
18 supply. It can scare away customers. It leaves a permanent scar, even
19 if promptly dismissed.

20 In re SBA Factors of Miami, Inc., 13 Bankr. 99, 101 (Bankr. S.D. Fla. 1981).

21 D & K, on the advice of its counsel, selected the wrong forum in which to prosecute its claims
22 against the alleged debtors. A petitioning creditor may not use an impermissible means to achieve
23 an otherwise legitimate goal. In re Camelot, 30 Bankr. at 411. The evidence is clear that D & K filed
24 the involuntary petition against GDI as leverage in its pending state court action and that it filed both
25 petitions against the alleged debtors as leverage to force Pon and her associates to concede in
26 negotiations to settle the lawsuits pending in Superior Court.

27 3. Under The Subjective Test, Improper Use Of Involuntary

Petition Is Evident

The evidence indicates that D & K improperly used the involuntary petitions in an attempt to force the alleged debtors to pay to them claims that are clearly the subject of bona fide disputes. That there are actions currently pending in Superior Court against GDI and V-2 evidences that that there is an alternate and more appropriate forum for the resolution of the dispute between D & K and the alleged debtors; however, D & K imprudently elected not to proceed in the Superior Court. D & K's improper use of the Bankruptcy Code as a substitute for state court collection procedures constitutes bad faith under § 303(i)(2).

4. D & K Is Not Insulated From Liability By Delegating Investigation To Kissinger

As the partner in charge, Kerrisk testified that he relied on Kissinger, D & K's counsel, "all the way through" from conducting all phases of the factual investigation to making the determination that sufficient grounds existed for filing involuntary petitions against Quan and GDI. He conceded that he had no independent knowledge of whether Quan was paying her debts as they came due. Delegation does not insulate D & K from liability.

D. Liability of Counsel for Rule 11 Sanctions

By noticed applications, the alleged debtors, Quan and GDI, sought an interim award of attorneys' fees and costs in the amount of \$10,449 through the end of April 1992 under Bankruptcy Code § 303(i)(1), and the Court determined that the applications were premature and deferred ruling pending a determination of liability for filing the petitions in bad faith. Pon also seeks a determination that Kissinger violated Rule 9011 by filing the involuntary petition against her, that he be ordered to pay her attorneys' fees, which were approximately \$87,000 as of the end of April 1993, and that he be held jointly and severally liable with his client, D & K, for any damages that may be awarded at the damages phase of the trial. The Court has authority under B.R. 9011 to award to an alleged debtor sanctions against counsel for improperly commencing an involuntary bankruptcy case under § 303. In re Century Tile and Marble, 152 Bankr. 688 (Bankr. S.D. Fla. 1993); In re Walden, 14 B.C.D. 399 (W.D. Tex. 1986), aff'd, 787 F.2d 174 (5th Cir. 1986); In re Tarasi & Tighe, 88 Bankr.

706 (Bankr. W.D. Pa. 1988)(to force settlement of what was essentially a contract dispute).

Bankruptcy Rule 9011 provides in pertinent part:

The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation or administration of the case.

Fed. R. Civ. P. 11, on which B.R. 9011 is based, is aimed at curbing abuses of the judicial system. Cooter & Gell v. Hartmarx Corp., 110 S. Ct. 2447, 2450 (1990). Rule 11 provides two bases for the imposition of sanctions: (a) if the paper is frivolous in the sense that after reasonable inquiry, the sanctioned party could not form a reasonable belief that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or (b) if it is filed for an improper purpose. In re Rainbow Magazine, Inc., 136 Bankr. 545, 550 (Bankr. 9th Cir. 1992).

The Supreme Court has read Rule 11 according to its plain meaning. Business Guides v. Chromatic Communications Enterprises, Inc., 111 S. Ct. 922, 928 (1991). A party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned. Id. Rule 11 imposes on a party signing a pleading an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing. Id. at 933. The applicable standard requires reasonableness under the circumstances, which is an objective standard. Id. at 934-35. Kissinger has argued that under the circumstances, he believed that involuntary petitions were warranted. However, counsel's subjective intent or belief is irrelevant. Rainbow Magazine, 136 Bankr. at 550-52.

As discussed above, applying an objective standard, Kissinger conducted an inadequate investigation and failed to act reasonably given the results of his investigation. Moreover, the petition against Pon was filed for the improper purposes to gain leverage against her and to harass and embarrass her. Kissinger's investigation prior to filing the Quan and GDI cases was also inadequate since it failed to discover whether the debtors were paying their debts as they came due. Kissinger

1 also filed these cases for the improper purposes of collecting a single debt and to exert pressure on
2 Pon's associates.

3 In addition to its authority under B.R. 9011, the court has the inherent power to impose
4 sanctions for bad faith conduct during litigation. Western Systems, Inc. v. Ulloa, 958 F.2d 864, 873
5 (9th Cir. 1992), cert. denied, 113 S. Ct. 970 (1993). Although Kissinger filed a chapter 11 case
6 personally since the trial, the court is not precluded by the automatic stay from issuing its opinion so
7 long as the estate is not affected. In re Willard, 15 Bankr. 898, 900 (Bankr. 9th Cir. 1981).

8 E. Setoff Of Damages

9 D & K has asserted that it may set off its claim against any damages awarded. However, the
10 purpose and effective operation of § 303(i) would be impaired if a petitioning creditor were permitted
11 to set off its claim against a § 303(i) damage award. In re K.P. Enterprises, 135 Bankr. 174, 186
12 (Bankr. D. Me. 1992).

14 CONCLUSION

15 For the foregoing reasons, the court finds that D & K filed the Quan and GDI cases in bad
16 faith under § 303(i)(2) and is liable in damages to the alleged debtors. The motions of Pon and of
17 Quan and GDI for sanctions against Michael Kissinger under Bankruptcy Rule 9011 are granted. In
18 addition, counsel may submit a declaration setting forth the alleged debtors' additional attorneys' fees
19 to date, which shall be awarded after a determination of reasonableness. Attorney Kissinger shall also
20 be held jointly and severally liable with his client, D & K, under B.R. 9011 for damages incurred by
21 Pon, which amount shall be determined in a subsequent trial.